

**OPINION
67-227**

January 11, 1967 (OPINION)

Honorable William L. Guy

Governor

RE: State - Industrial Commission - Notice of Hearings

This is in reply to your letter of December 31, 1966, relative to the procedure for public notice of oil and gas hearings before the North Dakota industrial Commission. You state the following facts and questions:

The law apparently requires that cases which are heard before the Industrial Commission regarding crude oil matters must be noticed in a county newspaper and in a newspaper having general circulation in Bismarck. I note that even though there are several newspapers which have general circulation in Bismarck, the notices are always placed in the Bismarck Tribune.

My question to you is this: Does the law require the Industrial Commission to place these notices of cases to be heard before the Industrial Commission in the Bismarck Tribune only?"

Section 38-08-11(4) of the North Dakota Century Code provides, insofar as is pertinent:

Any notice required by this chapter shall be given at the election of the commission either by personal service or by one publication in a newspaper of general circulation in the state capital and in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated.* * *

Section 46-05-01 of the North Dakota Century Code, as amended, does prescribe certain qualifications before a newspaper may qualify to do legal printing generally. Section 38-08-11 refers solely to a "newspaper of general circulation in the state capital." The newspaper so specified must, in addition to being a newspaper of general circulation in the state capital, meet the requirements of section 46-05-01 of the North Dakota Century Code, as amended. Unless the Bismarck Tribune is the only newspaper of general circulation in the state capital, or is the only newspaper meeting the requirements of section 46-05-01-, as amended, the law does not require the Commission to place notices of cases to be heard in the Bismarck Tribune only.

With respect to the requirements of section 46-05-01 of the North Dakota Century Code, as amended, they would appear to be self-explanatory for the most part and we do not believe further comment is necessary. With respect to what constitutes a "newspaper of general circulation" within the meaning of the statute, we would

note this term is not defined by statute nor has it been defined by the Supreme Court of this state.

However a newspaper of general circulation is generally considered to be one that "circulates among all classes and is not confined to a particular class or calling in the community, and is a term generally applied to a newspaper to which the general public will resort in order to be informed of the news and intelligence of the day, editorial opinion, and advertisements, and thereby render it probable that the notices or official advertising will be brought to the attention of the general public." See 66 C.J.S. 26, Newspapers, section 4. See also 39 AM. Jur. 6, Newspapers, section 8; 68 ALR 542.

The question whether a newspaper is of general circulation is manifestly a matter of substance, and not merely of size. The term 'general circulation' is a relative one, and its meaning must be determined by a process of inclusion and exclusion. That which will be of general circulation in a town of a small population cannot be said to be general in a populous city. A newspaper in order to have the characteristics of a newspaper of general circulation does not necessarily have to be read by all the people of the county. The question whether or not a newspaper is one of general circulation involves other elements besides the number of its subscribers, as discussed infra sec. 5, and the size of the community in which it is published and circulates.* * *." See 66 C.J.S. 26. See also Joint School Dist. No. 1 v. Joint County School Com. 26 Wisc. 2d. 580, 133 N.W.2d. 317 (1965)

The aim of a statute prescribing newspapers qualified to carry legal publications should be to have these publications made in a newspaper which is of general circulation in the community, so as to be generally read and so that the contents of the notice may be brought home to the public generally. Pirie v. Kamps, 68 Wyo. 83, 229 P.2d. 927.

In summary, it would appear that whether a newspaper can be considered to be a newspaper of general circulation within a specified area is essentially a question of fact. Since the notices of the Commission have, since enactment of the oil and gas conservation act, been published in the Bismarck Tribune, I presume the Commission has determined this to be a newspaper of general circulation in the state capital. It is possible that other newspapers might also meet the requirements of a "newspaper of general circulation in the state capital." This is a matter which must be determined, initially, by the Commission and should be based upon the criteria set forth above, i.e., the newspaper should be one "to which the general public will resort in order to be informed of the news and intelligence of the day, editorial opinion, and advertisements, and thereby render it probable that the notices or official advertising will be brought to the attention of the general public."

HELGI JOHANNESON

Attorney General